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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MAR 29 2004

FILE:

LIN 02 252 51131

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. §1254

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant failed to submit evidence to establish that he had met the date of entry, physical presence, and continuous residence criteria for temporary protected status. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant is the minor child of an alien who has been currently granted temporary protected status. Counsel asserts that as the child of an alien currently eligible to be a TPS registrant, the applicant need not establish that he entered the United States prior to December 30, 1998.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the Federal Register, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for repatriation; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the current extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The record reflects that the applicant filed his TPS application on August 1, 2002. He stated on the Form I-821 that he entered the United States on August 1, 2001. On November 26, 2002, the applicant was requested to submit: (1) evidence to show that he entered the United States prior to December 30, 1998; (2) evidence to show that he has continuously resided in the United States since December 30, 1998; (3) evidence to show that he has been continuously physically present since January 5, 1999; and (4) evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. In response, the applicant submitted the following evidence:

- 1) a copy of an identification card for the 2002-2003 school year issued by East Aurora School;
- 2) a copy of the marriage certificate of his parents;
- 3) a copy of his birth certificate;
- 4) a copy of a Form I-797D in the name Pedro R. Valdez Hernandez;
- 5) a copy of an Employment Authorization Card in the name Pedro R. Valdez Hernandez for the period July 6, 2002 to July 5, 2003;
- 6) a copy of an undated Motion to Terminate or Administratively Close removal proceedings against the applicant; and

- 7) a copy of an August 1, 2002 Order of Immigration Judge to administratively close removal proceedings against the applicant.

The director determined that the applicant had failed to submit any evidence of his date of entry into the United States prior to December 30, 1998.

On appeal, counsel contends that the applicant is the minor child of a current TPS registrant and, as such, he is eligible for late registration. However, while regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS.

By his own admission, the applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot satisfy the residence and physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). The director's decision to deny the application for temporary protected status will be affirmed.

The burden of proof is upon the applicant to establish that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.